

1 THE HONORABLE ROBERT J. BRYAN
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5 UNITED STATES DISTRICT COURT
6 WESTERN DISTRICT OF WASHINGTON AT TACOMA

7 DAVID RICE and ELIZABETH RICE,
8 individually and as a marital community; and
9 SETH DONAHUE, individually,

10 Plaintiffs,

11 v.

12 CITY OF ROY, a Washington municipality;
13 and CHRIS JOHNSON, individually,

Defendants.

NO. 3:20-cv-05223-RJB

DEFENDANTS' RESPONSE TO
PLAINTIFFS' MOTION TO AMEND
PURSUANT TO FED. R. CIV. P. 15(b)(1)

14 Defendants City of Roy, and Officer Chris Johnson respectfully request that this Court deny
15 Plaintiffs' Motion to Amend Pursuant to Fed. R. Civ. P. 15(b)(1). This untimely motion, filed after
16 the plaintiffs had completed their case-in-chief at trial and after defendants moved to dismiss
17 plaintiffs' *Monell* claim under Fed. R. Civ. P. 50(a), is improper and prejudicial to defendants.
18 Further, plaintiffs have not complied with LCR 15 by attaching a proposed amended complaint that
19 indicates the proposed changes. That alone is a basis for denial.

20 Plaintiffs deposed Mayor McDaniel over a year ago, on December 22, 2020. They deposed
21 former Chief Darwin Armitage on October 21, 2020. They also had the full benefit of a year-long
22 discovery period to learn who the chief policymaker is for purposes of officer discipline. They failed

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1 to do so. The City and Officer Johnson should not now be the ones to suffer prejudice for plaintiffs' 2 errors and failures. At this point, if plaintiffs are allowed to add a new party and new claim in the 3 middle of trial, after they have rested their case, defendants will be severely prejudiced. They will 4 have lost the opportunity to move to dismiss the claim at summary judgment, which they certainly 5 would have done.

6 Plaintiffs' dilatory conduct should not be rewarded. It is telling that they only brought the 7 motion to amend after defendants pointed out in their Rule 50(a) motion at the close of plaintiffs' case 8 that the *Monell* claim is legally and factually deficient. The Mayor has already testified at trial. 9 Plaintiffs do not identify any witnesses or new evidence, nor have they shown they could not have 10 learned of the basis for their *Monell* claim much sooner. Plaintiffs should not be permitted to add a 11 new claim *after* they have rested their case.

12 Plaintiffs' motion to amend is untimely and its granting would be severely prejudicial to 13 defendants, resulting in a miscarriage of justice. The time to bring this motion was during the 14 discovery period. Plaintiffs' counsel has dropped the ball in that regard. The Court should not 15 reward plaintiffs' less than diligent litigation tactics. The Court should deny plaintiffs' motion and 16 the parties should continue this trial on the remaining claims pled in the Complaint.

17 RESPECTFULLY SUBMITTED this 15th day of September, 2021.

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